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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,019	10/17/2000	Max Rombi	017753-128	4184

7590 06/13/2002

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EXAMINER	
PATTEN, PATRICIA A	
ART UNIT	PAPER NUMBER
1651	15

DATE MAILED: 06/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/601,019	Applicant(s) Rombi, M.
	Examiner Patricia Patten	Art Unit 1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Apr 2, 2002*.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1, 3-7, 9-12, and 14-24* is/are pending in the application.

4a) Of the above, claim(s) *6, 7, 9-12, 14-21, 23, and 24* is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1, 3-5, and 22* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claims 1, 3-8, 10-12 and 14-24 are pending in the application.

Newly submitted claims 6-7 , 9-12, 14-21 and 23-24 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 6-7, 9-12, 14-21 and 23-24 are now drawn to a method for promoting weight loss, maintaining a desired weight level, and a method for the curative and prophylactic treatment of obesity in patients. These methods are patentably distinct from the original method claimed, in that the original method was simply drawn to an aesthetic treatment via administration of the green tea extract. Thus, the methods could be carried out separately. Further, the methods can be carried out with patentably distinct compositions as evidenced by the claims themselves. For example, Claims 6 and 11 state a method for the curative and prophylactic treatment of obesity and a method for promoting weight loss via any extract from green tea, and claim 7 states the method can be carried out with a particular extract of green tea.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 6-7, 9-12, 14-21 and 23-24 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 1, 3-5 and 22 have been presented for examination on the merits.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 1 and 3-5 remain rejected and new claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura et al. (US 5,776,756). Newly submitted claim 22 is drawn to a composition comprising an extract of green tea comprising specific amounts of EGCG and caffeine.

Applicant's arguments filed 4/2/02 were fully considered, but not found persuasive.

Applicant's argue that Kimura et al. teach only a fermentation product rather than an extract from green tea. Applicants further argue that Kimura et al. do not teach any specific species of green tea, nor do they teach extraction with a specific amount of alcohol (pp.5-8 Arguments).

First, it is noted that although Kimura et al. did employ a fermentation product in the composition of their invention, green tea extract was nonetheless also present as a non-fermented ingredient (See for example, claim 2). Kimura et al. suggested alcohol as an extraction solvent

for green tea. Thus, one of ordinary skill in the art, in order to have prepared a composition according to claim 2 would have extracted green tea with any of water, alcohol, or a water/alcohol mixture. It is the alcohol extraction which would have afforded a composition comprising the constituents of the composition claims of the Instant invention. These constituents would have been intrinsic to the plant as well as intrinsic to the method of extraction.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. particular species of green tea and different percentages of alcohol as the extraction solvent) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Thus, although Applicants have shown that respective species of green tea contain different ratios of EGCG/caffeine and that varying the percentage of alcohol in an aqueous/alcoholic extraction solvent may produce compositions with variable percentages of active ingredients, these features are not claimed. Furthermore, the Specification teaches that green tea, when extracted with alcohol (100%) provides for the Instantly claimed composition. It is not found where a *specific* green tea will provide for the Instantly claimed composition.

No Claims are allowed.

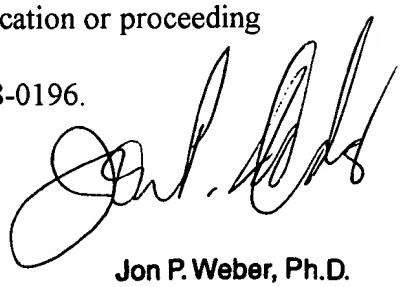
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Patricia Patten, whose telephone number is (703)308-1189. The examiner can normally be reached on M-F from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Jon P. Weber, Ph.D.
Primary Examiner